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December 20, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 96-45, Statement of the Universal Service Administrative Company
Regarding Schools and Libraries Universal Service Support Mechanism Appeal by
United Talmudical Academy

Dear Ms. Roman Salas:

The Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") denied the FCC Form 471 application for support filed by the United Talmudical Academy ("UTA") for year one of the Schools and Libraries Universal Service Support Mechanism. The SLD denied UTA's application because it found that UTA could not provide adequate documentation to support its certification on item 22 of the FCC Form 471 application that UTA had, in the words of the certification, "secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services." SLD's approved procedures for reviewing applications for support require verification of this certification on selected applications. Under a policy adopted by the Schools and Libraries Committee of the USAC Board of Directors, in instances where SLD concludes that an applicant cannot provide sufficient documentation to support its necessary resources certification, SLD denies all applications, including all the funding requests on each application, submitted by that applicant. UTA has appealed SLD's denial of its request for support for telecommunications services (that is, the portion of its funding requests seeking support for such services) to the Commission. In order to ensure that the record before the Commission is developed fully, this letter provides the Commission with a summary of the SLD policy concerning denial of funding requests for failure to document fully a necessary resources certification.

SLD's review of the necessary resources certification is performed at the applicant level. That is, whether an applicant files one consolidated application or a number of applications with some portion of its

funding requests on each one, SLD reviews the adequacy of support resources against the totality of the funding requests across all applications. If SLD determines that support resources are insufficient, SLD policy is to deny all funding requests associated with that applicant.

The SLD policy of denying all funding requests from an applicant that fails a necessary resources review is based on the Telecommunications Act of 1996, the Commission's regulations governing the Schools and Libraries Program, and the applicant certification required on FCC Form 471 as approved by the Commission and the Office of Management and Budget ("OMB"). Section 254(h)(1)(B) of the Act limits discounts to services provided in response to bona fide requests made for services to be used for educational purposes. The necessary resources certification requirement, as adopted by the Commission and applied by SLD, is critical to achieving compliance with section 254(h)(1)(B) by helping to ensure that requests for discounted services are, in fact, bona fide requests and that applicants can make use of those services for their intended educational purpose. The Schools and Libraries Program is to a large extent built on the principle of self-certification by applicants of compliance with the requirements of the Act. As stated by the Commission in its May 8, 1997 Report and Order, "schools and libraries should be required to comply with self-certification requirements, each designed to ensure that only eligible entities receive universal service support and that they have adopted plans for securing cost-effective access to and use of all of the services purchased from telecommunications carriers under section 254(h)(1) and non-telecommunications carriers under sections 254(h)(2) and (i)."¹ Section 54.504(b)(2) of the Commission's regulations governing the Schools and Libraries Program codifies these principles.

SLD reviews all requests for funding on an individual basis, but it necessarily relies to a significant extent on applicant certifications that they are complying with program rules. Where SLD determines that a necessary resources certification is inaccurate and/or inadequate, the validity of the entire application is called into question. SLD's policy of denying all funding requests associated with an inadequate necessary resources certification is thus based in large measure on maintaining program integrity. Moreover, SLD is required to take steps to prevent waste, fraud and abuse in the Schools and Libraries Program. *See* 47 CFR 54.702(h). If SLD is to fulfill its regulatory obligation, in cases where SLD looks behind applicant certifications and determines that such certifications are not adequately supported, then SLD is required to take action regarding those funding requests. If this were not SLD policy, then it would not be fulfilling its regulatory duty, and the critical contribution to program integrity made by self-certification would be undermined to a significant degree. The Schools and Libraries Committee of the USAC Board of Directors considered the question whether support for basic telephone service should be provided even though an applicant fails its necessary resources review. In the interest of ensuring the integrity of the self-certification requirements of the program, after careful consideration the Committee concluded that all requests for support should be denied if an applicant fails its necessary resources review.

If the SLD were to ignore an inaccurate necessary resources certification and attempt to approve only the portions of an applicant's total funding requests that could be supported with the resources to which the applicant has documented it has secured access, then SLD would be required to "stand in the shoes" of the

¹ *See* In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order at paras. 425, 577 (rel. May 8, 1997).

applicant and decide which funding requests to approve and which to deny. In making this determination, SLD would be required to make decisions on behalf of the applicant concerning how to allocate the applicant's available resources among particular funding requests. Not only would this present an insurmountable administrative task, it would undermine the program goal of allowing applicants to determine the type of services they need. Without detailed, intimate knowledge of an applicant's current education technology, its budgeted plans for the future, and how individual funding requests fit into the applicant's technology plan, SLD would very likely approve requests for support that would not make for an integrated system and that would not produce the educational benefits for which the Schools and Libraries Program was established. The program is premised on the fact that applicants are in the best position to design and implement their own education technology programs. Applicants currently do that through their technology plan. Then the applicant itself must certify on its FCC Form 471 application that it has the support resources necessary to make effective use of the discounts provided under the Schools and Libraries Program.

Finally, placing SLD in the position of making choices among an applicant's funding requests based on SLD's assessment of what the applicant may be able to support would increase the work involved in administering the program significantly, and administrative costs necessarily would increase. It would require SLD to obtain much more information from applicants and service providers about the technology and resources the applicant already has in place and the products and services to be purchased. The SLD would be placed in the position of attempting to determine which of the requested services and products could be integrated with the applicant's existing technology and whether they could be supported with the support resources the applicant could be expected to have in place. For example, if major new equipment were requested, then SLD would have to determine whether that equipment could be operated with the existing electrical system or whether an upgrade would be required and, if so, whether the applicant had sufficient budget resources for the upgrade. That would be a time-intensive and labor-consuming effort that would divert program resources from support for discounts for schools and libraries to a much larger administrative review effort.

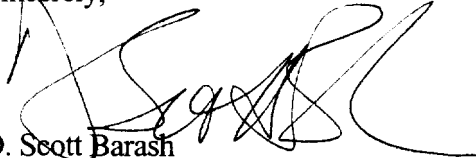
The Commission could reconsider this question. If it were to do so, program rules could be seen as drawing a distinction between basic telephone service and all other services supported under the program. Should the Commission provide an exception from SLD's current necessary resources review procedure for basic telephone requests, USAC recommends that the Commission provide such an exception only with respect to basic telephone service that is provided on a stand-alone (unbundled) basis and where the request appears under a separate funding request on the FCC Form 471, rather than as part of a grouping with other services under the same funding request. Creating such an exception would not require SLD to substitute its judgment for that of the applicant in making decisions concerning the applicant's technology plan and would be consistent with existing Commission policy insofar as applicants requesting only discounted basic telephone service are not required under the FCC Form 471 to submit a technology plan. SLD could, without significant additional administrative burden, administer a Commission decision that necessary resources reviews should not be conducted for funding requests seeking support for basic telephone service only. Were the Commission to draw the line elsewhere, however, program integrity would be undermined and

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SLD would be placed in the difficult administrative position (and would necessarily incur increased administrative costs) described above.

We hope this information will be helpful to the Commission as it considers UTA's appeal. We will be happy to provide any additional information concerning this matter at your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Scott Barash', written over a horizontal line.

D. Scott Barash
Vice President and General Counsel

cc: Irene Flannery
Sharon Webber
Dorothy Attwood
Jordan Goldstein
Kyle Dixon
Rebecca Beynon
Sarah Whitesell